

TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM

CHAPTER 3

PERMITTING PROGRAM DESCRIPTION

I. INDUSTRIAL AND MUNICIPAL PERMIT DEVELOPMENT

A. PERMITTING PROGRAM STRUCTURE

The Wastewater Permits Section of the Water Quality Division is responsible for the administrative and technical processing of wastewater permit applications related to non-domestic, public domestic, private domestic discharges, and storm water discharges. For purposes of this document, non-domestic discharges shall be referred to as industrial discharges and public domestic and private domestic discharges will collectively be referred to as municipal discharges. The teams of Wastewater Permits Section involved in this processing include: 1) Applications Team; 2) Industrial Permitting Team; and 3) Municipal Permitting Team. A discussion of job duties for permitting personnel associated with these functions is included in Appendices and Tables pertaining to Chapter 7.

1. Applications Team. Primary responsibility is for the receipt and administrative review of all new, amended, and renewal applications for wastewater discharge permits, including minor amendments and permit transfers. Copies of the Industrial and Municipal permit application forms are included in Appendix 3-A. These forms consist of a set of instructions, an errata sheet, an administrative report, a technical report for an industrial wastewater application, a technical report for a municipal wastewater permit application, and a technical report for sewage sludge. Miscellaneous forms utilized by the Wastewater Permits Section are included as Appendix 3-B. These forms include forms to request transfer of the permit, to request an address change, to request a name change, and to request voluntary revocation of a permit. All pertinent TNRCC permit applications have been

revised, as necessary, in anticipation of NPDES program assumption. TNRCC will utilize EPA's existing application format for Municipal Separate Storm Sewer System (MS4) applications from medium or large municipal systems (tracking all appropriate application requirements in 40 CFR §122.26(d)) and EPA's general permit Notices of Intent (NOIs) for applications for coverage for storm water associated with industrial activities. Any permit application forms used by TNRCC, while not necessarily identical to the forms used by EPA, will require the same basic information. TNRCC will update its application forms as needed after promulgation of new NPDES regulations. Applications are evaluated to make certain that all required information has been provided, that the application includes a sworn statement signed by an authorized person, and that the applicant is a legal entity authorized to do business in Texas. Other duties include:

- a. developing a Notice of Receipt of Application for the Office of Chief Clerk for each new and major amendment application declared administratively complete;
- b. providing input to the data entry staff to maintain computer records on all applications and permits (all entries into the Permit Compliance System (PCS) will be completed as described in Chapter 6; and
- c. coordinating requests for other permit actions such as Transfers, Corrections, and Revocations in accordance with 40 CFR Part 122 as adopted by 30 TAC Chapters 305 and 50.

Renewal notices with the application forms are mailed to permittees approximately one year prior to permit expiration. This notice includes instructions to submit renewal applications at least 180 days prior to the permit expiration date. Upon receipt of an application, TNRCC processing is carried out in accordance with 30 TAC Chapter 281.

The Applications Team will process storm water NOIs for dischargers seeking coverage under a general permit issued by TNRCC. TNRCC will begin processing permit applications

relating to MS4 permits at the time it receives requests from cities seeking renewal of their EPA-issued MS4 permit. TNRCC will also process permit applications from any city newly-identified as subject to the MS4 permitting requirements.

The Applications Team will also process all other NOIs for any municipal or industrial discharger seeking coverage under a TPDES-issued general permit or an EPA-issued general permit assumed by the TNRCC. The team will administratively process requests for registration by dischargers seeking to discharge under a TPDES-approved authorization by rule.

2. **Industrial Permitting Team.** Primary responsibilities are for the technical review and evaluation of industrial (non-domestic) wastewater permit applications, the development of draft permits, providing technical assistance to other divisions and sections of the agency, and presenting expert testimony at public hearings. Other responsibilities of the team include development of individual industrial storm water permits, regulating point source discharge of storm water in industrial wastewater permits, development of authorizations by rule or general permits for industrial discharges, and development of sewage sludge requirements into industrial wastewater permits, where an industry might be involved in such activities. Additional information on permit development is provided later in this chapter.
3. **Municipal Permits Team.** Primary responsibilities are for the technical review and evaluation of municipal (public domestic and private domestic) wastewater permit applications, the development of draft permits, providing technical assistance to other divisions and sections of the agency, and presenting expert testimony at public hearings. The team will be responsible for the technical review of MS4 permit applications and the development of MS4 permits. Development of authorizations by rule or general permits for municipal discharges and development of sewage sludge requirements into municipal wastewater permits is also a responsibility of the team. Additional information on permit development is provided later in this chapter.

B. PERMIT DEVELOPMENT

Municipal and Industrial permits will be consistent with State and Federal statutes, regulations, and policies. This section describes considerations for development of these permits.

1. General Considerations. The following information will be considered in the review and preparation of industrial/municipal permits, if applicable:

- a. Permit application;
- b. Existing state and federal wastewater permits;
- c. Water quality management plans;
- d. Waste load evaluations and intensive surveys;
- e. TNRCC receiving water assessments (RWAs) and other sources of information pertaining to species present in an affected water body, including a federally-listed endangered species;
- f. Water quality standards implementation procedures as included in the water quality management program Continuing Planning Process (Appendices 3-C and 3-D);
- g. Title 30 Texas Administrative Code:
 - Chapter 7 - Memoranda of Understanding
 - Chapter 39 - Public Notice
 - Chapter 50 - Action on Applications
 - Chapter 55 - Request for Contested Case Hearings
 - Chapter 213- Edwards Aquifer
 - Chapter 281- Application Processing
 - Chapter 305- Consolidated Permits
 - Chapter 307- Texas Surface Water Quality Standards
 - Chapter 308- Criteria and Standards for NPDES
 - Chapter 309- Effluent Standards

Chapter 311- Watershed Protection

Chapter 312- Sludge Use, Disposal, and Transportation

Chapter 314- Toxic Pollutant Effluent Standards

Chapter 315- General Pretreatment Regulations for Existing and New Sources of Pollution

Chapter 317- Design Criteria for Sewerage Systems

Chapter 319- General Regulations Incorporated into Permits

Chapter 321- Control of Certain Activities by Rule

Chapter 322- Community Wastewater Planning

Chapter 325- Certificates of Competency

Chapter 332- Composting

Chapter 336- Radiation Rules

i. Title 40 Code of Federal Regulations:

Part 122- NPDES Program

Part 123- State Program Requirements

Part 124- Procedures for Decision Making

Part 125- Criteria and Standards for NPDES

Part 129- Toxic Pollutant Effluent Standards

Part 133- Secondary Treatment Regulations

Part 136- Test Procedures for Analysis of Pollutants

Part 257- Solid Waste Disposal Regulations

Parts 400 thru 471- Effluent Limitation Guidelines, including Pretreatment Regulations

Part 501- State Sludge Management Program Regulations

Part 503- Standards for the Use and Disposal of Sewage Sludge

i. EPA development documents and supporting *Federal Registers*;

- j. EPA toxic criteria documents;
 - k. EPA *Permit Writer's Guide to Water Quality Based Permitting*;
 - l. EPA guidance for case-by-case permit requirements for municipal sewage sludge;
 - m. EPA *Technical Support Document for Water Quality-Based Toxics Control*;
 - n. Treatability manuals and information;
 - o. Enforcement orders;
 - p. Self-reported effluent data (DMRs);
 - q. State and available federal compliance inspection reports;
 - r. State of Texas Water Quality Inventory (305b Report); and
 - s. Information on potential impacts on properties listed or eligible for listing in the National Historic Register of Historic Places.
2. Technology Based Limits. Technology based permit limits will be at least as stringent as Best Practical Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) limits in accordance with Effluent Limitations and Standards as promulgated for categorical industries and found in 30 TAC §305.541. New Source permits will be based upon the New Source Performance Standards. Additional water-quality based effluent controls will be applied as described in paragraph 3. below. Municipal permit limits will be consistent with Wasteload Evaluation/Allocations or TMDLs, Water Quality Management Plans, Watershed Protection Rules (30 TAC Chapter 311), and will be at least as stringent as requirements found in 30 TAC §305.535 and Chapter 309 for secondary treatment. Permit requirements and limits will be considered on a case-by-case basis and based on Best Professional Judgement (BPJ) in accordance with 30 TAC §308.1 when specific regulations do not apply to a particular facility.

TNRCC will implement all technology-based requirements in general permits associated with

industrial stormwater activity. General stormwater permits and MS4 permit requirements will be equivalent to 40 CFR §122.26 and incorporate any other state requirements in effect at that time. Any general permit or authorization by rule developed for non-storm water municipal and industrial activity will also implement all technology-based requirements consistent with federal and state regulations.

3. **Water Quality Based Limits.** Water quality based effluent limitations will be developed in accordance with 30 TAC Chapter 307, entitled Texas Surface Water Quality Standards, 40 CFR §122.44(d) as adopted by 30 TAC §305.531(c), and the surface water quality standards implementation procedures as referenced in the Water Quality Management Program-Continuing Planning Process. The standards implementation procedures (Appendix 3-D) describe in detail the TNRCC approach to screening discharges for compliance with both numeric aquatic life and human health criteria, and for developing specific numerical limits, whole effluent toxicity limits, and monitoring requirements in permits. Additionally, the specific procedures for development of permits described in Section IV.B. of the MOA will supersede the implementation procedures when TPDES permits are developed.
4. **Aquaculture and Silviculture Discharges.** As described in 40 CFR §122.24, TNRCC will require a TPDES permit, authorization by rule, or general permit for a discharge from a concentrated aquatic animal production facility. TNRCC has developed a state authorization by rule for certain minor aquatic animal production facilities. After program assumption, TNRCC will amend its rule (30 TAC, Chapter 321, Subchapter O) and again authorize minor discharges under the rule rather than an individual permit. The rule making is subject to public notice and comment along with EPA review. As described in 40 CFR §122.27, TNRCC will require a wastewater discharge permit related to silvicultural point source discharge activities. For both these categories of discharges, TNRCC will establish permit conditions using best professional judgement and implement any

requirements necessary to meet the Texas Surface Water Quality Standards. Additionally, the TNRCC will apply technology based effluent limitations when appropriate. Title 40 CFR Part 436, Subpart B will be utilized for silviculture point source discharges associated with rock crushing and gravel washing. Title 40 CFR Part 429, Subpart I will be utilized for silviculture point source discharges associated with log storage and log sorting operations.

5. **Permits Authorizing Disposal of Effluent.** TNRCC has the authority to control discharges of wastewater which occur adjacent to waters in the state, pursuant to the Texas Water Code, §26.121. TNRCC requires discharge permits for industrial and municipal entities which dispose of wastewater by practices such as land application, irrigation, evaporation, and sub-surface percolation. Alternatively, TNRCC authorizes several categories of waste discharge and disposal under authorizations by rule. In general, these activities are not subject to NPDES permitting requirements. TNRCC has also developed a policy to establish permitting requirements for discharges into playa lakes, specific for those discharges to playas authorized by the state in permits issued prior to July 10, 1991. This policy recognizes the prior authorizations for disposal granted to the permitted wastewater dischargers, for discharges where the playas are waste retention structures. The policy specifies that TNRCC would impose water quality based limitations if it were determined that a discharge is into waters of the United States. Details of this policy are found in Appendix 3-E.
6. **General Permits.** Section 26.040 of the Texas Water Code authorizes the Commission to regulate and set the requirements and conditions for the discharge of waste by general permit. This authority and the requirements for developing and processing of general permits are as stringent as comparable federal requirements in 40 CFR §122.28. TNRCC will assume federal general permits covering municipal and industrial discharges at the time of program assumption or expiration of a federally-issued permit (such as in the case of storm water general permits, as specified in the MOA).

For general permits that will be assumed immediately upon program assumption, TNRCC will administer a permitting program to process Notices of Intent (NOIs), maintain information on the notices it receives in a database which will contain all pertinent NOI information received, and process Notices of Termination (NOTs).

For general permits where jurisdiction passes at the time of the federal permit's expiration, TNRCC will renew the permits and add any state-required, more stringent conditions to the permit at that time. Any person who applies for renewal under the general permit prior to the expiration of the federal permit, who is ineligible for coverage under a more-restrictive state general permit, will be provided notice of the need to submit an application for an individual permit. The applicant will be provided a deadline for filing the application, along with an application form.

Section 26.040 of the Water Code allows the issuance of general permits for a category of dischargers in a particular geographical area which may include a subdivision of the state, a particular watershed(s), or the entire state. At this time, general permits will not allow discharges to surface water greater than 500,000 gallons in any 24-hour period. General permits may be issued where the dischargers are:

- a. engaged in the same or substantially similar types of operations;
- b. discharge the same types of waste;
- c. are subject to the same requirements regarding effluent limitations or operating conditions;
- d. are subject to the same or similar monitoring requirements; and
- e. are, in the commission's opinion, more appropriately regulated under a general permit than under an individual permit based on findings that the permit can be enforced and will not cause significant adverse effects upon water quality.

7. Authorizations by Rule. Section 26.040 of the Texas Water Code also allows TNRCC to continue to authorize certain categories of waste discharge by rule. Under state authority, these include

discharges into surface waters. After program assumption, existing rules may be amended to include federal requirements, subject to public notice, public comment, and EPA review. Afterwards, an amended rule will become part of the TPDES program to authorize certain categories of dischargers. As amended after NPDES authorization, permits and discharge authorizations will be equivalent to general permits under the NPDES program. Title 30 TAC §321.141 has been adopted which specifies that authorizations by rule will be consistent with the requirements of 40 CFR §122.28.

8. Industrial Storm Water Permits. TNRCC will implement all requirements of 40 CFR §122.26 in carrying out a storm water permitting program for discharges associated with industrial activity.
 - a. To the maximum extent possible, discharges associated with industrial activity will be authorized by general permits issued by TNRCC. Additionally, activities not authorized by general permit will be permitted individually. At least three examples exist where these activities will be individually authorized:
 - (1) Where an industry already holds or requires an individual permit for other discharges from a facility, in which case storm water discharges may be authorized as specific outfalls in the permit;
 - (2) Where a person must discharge storm water at a volume which would exceed 500,000 gallons in any 24-hour period, in which case coverage under a general permit may not be allowed under existing state law; or
 - (3) Where an industrial activity includes a discharge which otherwise cannot comply with the terms of a general permit for site-specific reasons, in which case an individual permit would be developed that complies with state and federal requirements.
 - b. Under the TPDES program, a storm water discharge requiring coverage under a TPDES individual or general permit associated with industrial activity will include the same

categories of industry as specified in 40 CFR §122.26(b)(14).

- c. TPDES application requirements for individual applications will be consistent with 40 CFR §122.26(c). TNRCC's permit application forms for an individual industrial permit includes all information consistent with EPA Forms 1, 2C, and 2F. Applicants for non-construction industrial activity, individual stormwater permits will be required to supplement their application and provide all information as specified in 40 CFR §122.26(c)(1)(i)(A) - (G). Applicants for construction industrial activity, individual stormwater permits will be required to supplement their application and provide all information as specified in 40 CFR §122.26(c)(1)(ii).
 - d. As described in the MOA, EPA will maintain jurisdiction over the general permits it has issued and any general permit for which public notice occurred before program assumption. EPA will process any needed modifications to those permits during the term of the general permits. TNRCC will renew those general permits, beginning that process prior to the expiration of each of the general permits with the intent of timing renewal prior to the expiration of the NPDES general permit. After issuance, applicants seeking authorization under a TPDES general permit pertaining to industrial stormwater activities will submit an NOI to seek coverage under the permit; the NOI form will be developed along with any general permit issued by the TNRCC. TNRCC will administer a permitting program of processing Notices of Intent (NOIs), maintain information on the notices it receives in the PCS database, and process Notices of Termination (NOTs).
9. Large and Medium Municipal Separate Storm Sewer System (MS4) Permits. The TNRCC will require individual permits and process permit applications from all large and medium MS4s as defined in 40 CFR §122.26(b), including all systems described in Texas in Appendices F - I of Part 122. MS4 permits will be issued in one system-wide permit or distinct categories of discharges

within a system, consistent with 40 CFR §122.26(a)(3). TNRCC will utilize the EPA application format in the TNRCC program and will require all Part 1 and Part 2 information from the applicant, as described in detail in 40 CFR §122.26(d). However, TNRCC will utilize the February 7, 1996, EPA-issued “Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems” and any subsequent EPA rule making to reduce the amount of information required for re-application by MS4 permittees. As described in the MOA, EPA will maintain jurisdiction over the MS4 permits it has issued and any MS4 permit for which public notice occurred before program assumption. EPA will process any needed modifications to those permits during the term of the permits. TNRCC will renew these permits, beginning that process upon application by the permittees for renewal. TNRCC will additionally process applications from any MS4 entity which is identified as requiring an MS4 permit for the first time (due to population increases, a determination relative to the size, location, or nature of the pollutants discharged from a separate storm sewer system, or other factors consistent with NPDES requirements).

10. Development of Storm Water Permit Conditions. Individual and general permits authorizing storm water discharges must meet any technology-based effluent limitations, as may apply to a particular category of facility, for instance, guidelines for storm water discharges from an industry identified in 40 CFR Parts 400 - 471. Water quality based limitations and other permit conditions may be applied, as necessary in order to protect the quality of waters in the state, consistent with Chapter 26 of the Texas Water Code, the CWA, and 30 TAC Chapter 307, relating to the Texas Surface Water Quality Standards. TNRCC will consider the EPA's *Interim Approach for Water Quality-Based Effluent Limitations in Storm Water Permits* (8/26/96) in developing permit conditions. Where it is infeasible to establish numeric effluent limitations, a TPDES storm water permit may establish a best management practice(s), in accordance with 40 CFR §122.44(k). Storm water permittees for an industrial activity will be expected to report the results of monitoring specific effluent parameters

to the TNRCC upon request and will be required to maintain a pollution prevention plan (PPP), in accordance with 40 CFR §122.44(i)(2).

C. INDIVIDUAL PERMITTING PROCESS

The review of municipal and industrial applications and permits by the TNRCC involves several processing steps and coordination among various groups of the agency. The overall wastewater permitting process is shown in Figure 3-1 and is discussed in the following sections:

1. **Application Review and Initial Public Notice.** All industrial and municipal applications are received by the Applications Team and reviewed for administrative completeness. This review is completed within ten (10) working days of the receipt of an application unless it is incomplete and additional information is necessary. If more information is necessary, the applicant has up to thirty (30) days to respond. When an application for a new permit or a major amendment is administratively complete, a Notice of Receipt and Declaration of Administrative Completeness is prepared by the Applications Team and submitted to the Office of Chief Clerk for mailing to affected landowners, county, State, and federal officials, and other interested persons. The purpose of this notice is to provide early notification to persons who may potentially be affected by the proposed discharge or activity.
2. **Use Assessment, Modeling, and Receiving Water Information.** Once the application is declared administratively complete, it is transferred to the Toxicity Evaluation Team of the Standards and Assessment Section where each outfall and/or proposed outfall is plotted on a set of county maps. The critical low flow conditions of the receiving water are then determined for each outfall as necessary. This information is maintained in a database and is used to develop appropriate permit limits and biomonitoring requirements. Following review by the Toxicity Evaluation Team, it is

transferred to the Water Quality Standards Team for a receiving water use determination and then to the Water Quality Modeling Team for water quality modeling. Both of these teams are in the Standards and Assessment Section. For unclassified receiving waters, the Water Quality Standards Team will decide whether stream data is need to make a preliminary use determination. If such data is required, a Receiving Water Assessment (RWA) will be conducted by TNRCC Regional Office personnel or other similarly qualified staff on unclassified receiving waters in the area of the discharge. The RWA consists of measurements and observations at the discharge site on habitat characteristics, flow characteristics, and the composition and abundance of aquatic organisms. Data collected for the RWA is used to calculate a series of numerical indicators which identify the appropriate aquatic life use category for the site. Once a preliminary use assessment is made, documentation will be placed in the TNRCC file. The Water Quality Modeling Team will run water quality simulation models to predict impacts of the discharge on the receiving water and determine loadings that will protect assessed or designated uses. The modeler will prepare a memo including recommendations on permit limitations required to maintain the water's uses. The application is transmitted to the appropriate team (Municipal or Industrial Permitting Team) for assignment to a permit writer for technical evaluation and development of a draft permit.

3. Whole Effluent Toxicity Testing. The TNRCC generally requires whole effluent toxicity (WET) testing, also known as biomonitoring, in permits where the potential exists for the effluent to exert toxicity in the receiving water. The TNRCC generally requires biomonitoring for domestic facilities with a daily average flow of one (1) mgd or greater, most major industrial facilities, and other facilities that have the potential to exert toxicity in the receiving water. TNRCC requires two types of toxicity tests: whole effluent tests based upon receiving water dilution, and 100% end-of-pipe acute toxicity tests. Details of implementation are found in the standards implementation procedures (Appendix 3-D) and as identified in the MOA, Section IV.B. These procedures describe the

required responses and assessments a permittee must undertake if the results of a WET test indicates toxicity in the effluent. The Texas Surface Water Quality Standards and the implementation procedures specify the procedures whereby permits will be amended at the conclusion of a Toxicity Reduction Evaluation (TRE) to establish a WET effluent limitation, chemical-specific effluent limit, or a best management practice to control against whole effluent toxicity.

4. Technical Review and Draft Permit Development. Technical review and preparation of a draft permit is required to be completed for all permit applications (new, major amendments, minor amendments, renewals) within seventy-five (75) working days of declaring an application administratively complete. The deadline can be extended if the application is not technically complete and additional information is requested by the staff permit writer in accordance with 30 TAC §281.19(b).
 - a. New Source Determinations. Applications for new or amended permits will be reviewed initially to decide if a New Source determination is necessary. The State will make the necessary New Source determinations in accordance with 30 TAC §305.534 only for the purpose of applying New Source Performance Standards as specified in effluent limitation guidelines. New Source Permits must be based upon New Source Performance Standards. EPA may assist the TNRCC when necessary to assess the impact of the New Source on the environment. TNRCC will include its New Source Determination in the fact sheet. Because a TPDES permit is not a federal action, applicants will not be required to submit Environmental Impact Documents or Environmental Impact Statements to the TNRCC for review. In addition, the State will not publish public notice of New Source determinations.
 - b. Variance Request Determinations. Applications will also be reviewed to determine if any variances under Sections 301 or 316 of the CWA have been requested. The following CWA variances will be reviewed and either recommended for approval or denied by the State but

must be approved by EPA. Reviews will be conducted in accordance with the applicable Section of the CWA, as specified in 40 CFR Part 125:

- (1) 301(i)- Extension of Compliance Dates;
- (2) 301(k)- Innovative Technology; or
- (3) 316(a)- Alternative Effluent Limitations.

The following CWA variances will be reviewed and either recommended for approval or denied by the State, but must be approved by the EPA in accordance with applicable sections of 30 TAC Chapter 308:

- (4) 301(n)- Fundamentally Different Factors;
- (5) 301(c)- Economic Variances from BAT;
- (6) 301(g)- Water Quality Related Variances; and
- (7) 301(h)- Modifying Secondary Treatment Requirements.

- c. **Majors Determinations.** The TNRCC may make recommendations to EPA on classifying permit holders as major or minor, as necessary, in accordance with EPA classification criteria. Current majors classification criteria that will be used are included in Appendix 3-F.
- d. **TNRCC Review of Draft Permits.** Once all the technical information has been received and reviewed, a draft permit is developed in accordance with appropriate State and Federal statutes, regulations, and policies to protect water in the state. Each draft permit is reviewed by the team supervisor. All new and major amendment applications, as well as all major facility renewal applications are also reviewed by the Wastewater Permits Section Manager for accuracy and consistency. Applications for amendment or renewal of existing permitted discharges will be reviewed for consistency with the antibacksliding requirements of the Clean Water Act, as specified in III.C.2.d. of the MOA. New permits and permit amendments which increase discharge loadings are also reviewed by the Water Quality

Standards and Modeling Teams for compliance with antidegradation provisions of the Texas Surface Water Quality Standards. Antidegradation procedures are described in the Standards Implementation Procedures (Appendix 3-D). The draft permit is then mailed to the permittee with a fourteen (14) day or greater comment period. New permit applications, all permit amendment applications, and renewal applications of all major permits are scheduled for review at a TNRCC Executive Review Committee (ERC) meeting. Draft renewal permit applications which are not classified as majors are not reviewed by the ERC. The ERC includes representatives from the Standards and Assessment Section, the Wastewater Permits Section, and the Legal Division. Appropriate Regional Offices of Field Operations Division also receive copies of draft permits for review and comment prior to the ERC meeting. The purpose of the ERC is to coordinate agency action on permit applications. Comments to the draft permit by the applicant and/or ERC will be evaluated and the draft permit will be revised as necessary.

- e. EPA Review of Draft Permits. After completing the process of receiving management comments, a draft permit is then filed with the Chief Clerk's Office. Simultaneously, any draft permits and corresponding file information subject to EPA review are also mailed to EPA. In addition to any draft permits identified in the MOA as subject to EPA review, TNRCC will also forward requests for standards variances to EPA. TNRCC will forward any draft permit, corresponding Fact Sheet or Statement of Basis, and draft "Order for a Temporary Variance from the Texas Surface Water Quality Standards", to EPA for its review and approval. Public notices will be prepared and mailed to the applicant with a copy of the public notice also mailed to EPA at the same time. Please refer to the MOA, Sections IV.C. and D., for a complete description of EPA review procedures and state and federal agency coordination that occurs as TPDES permit applications are processed by TNRCC.

5. Public Notice. All individual permit applications for a municipal, industrial, and sewage sludge TPDES permit are subject to public notice of the draft permit. The specific standards for public notice of a draft permit are specified in 30 TAC Chapter 39 which is consistent with 40 CFR §124.10. The TNRCC's Office of Chief Clerk (OCC) prepares all public notices. For public notice of all new, renewal, and major amendment applications, such notice will be mailed to the applicant with instructions to cause the notice to be published in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located, and within each county and wherein persons reside who would be affected by the facility or proposed discharge. The applicant must file an affidavit with the OCC certifying that the publication occurred, in accordance with 30 TAC §39.5(f) and (g).

The notice of a TPDES draft permit, or notice of an executive director determination to deny an application, will be mailed by the OCC to EPA, U.S. Fish and Wildlife Service, the Advisory Council on Historical Preservation, Texas Historical Commission, Texas Parks & Wildlife Department, an affected State or Indian tribe, the U.S. Army Corps of Engineers, National Marine Fisheries Service (for discharges to coastal or estuary areas, or territorial seas), any industrial user identified in the permit application of a publicly-owned or privately-owned treatment works, the designated CWA §208 planning agency, and other persons on the TNRCC mailing list or who in the judgment of the TNRCC may be affected. In accordance with 30 TAC §39.7, persons requesting mailed notice will be provided such notice of draft permits. Additionally, mailed notice is required for new and major amendment applications to landowners named in the permit application, including all landowners adjacent to or abutting a wastewater treatment facility or sewage sludge management facility and nearby landowners adjacent to waters in the state beginning at the point of the proposed discharge. Local officials, including the mayor and health authorities of the city or town in which the facility is located as well as the county judge and health authorities of the county in which the

facility is located, are also required to be provided mailed notice. Personal service or electronic transfer may be substituted for mailing. Additionally, 30 TAC §39.13(7) - (8) references 40 CFR §124.10(c) and (c)(1)(ix) as requirements for public notice for purposes of TPDES permits. Title 30, TAC §39.11 specifies the content of a published and a mailed public notice, consistent with 40 CFR §124.10(d). The public comment period for draft permits is thirty (30) days.

6. Public Comments, Response to Comments, and Hearings.

a. Uncontested Permits. The proposed permit shall be considered for action after the close of the thirty (30) day period for public comment. Title 30, Chapter 50 describes in detail when the executive director may take action on the permit and when the Commission must consider the proposed permit. The executive director may consider the permit application and proposed permit after a response to any public comment has been prepared and based upon factors are specified in 30 TAC §50.33, including when the application is considered uncontested; that is, because:

- (1) no timely hearing requests were filed with the OCC;
- (2) the applicant or persons who filed timely hearing requests have agreed in writing to the action to be taken by the executive director; or
- (3) any timely requests have been withdrawn in writing or have been denied by the Commission.

b. Processing Hearing Requests. If a request for a hearing has been received, the request for hearing will be forwarded to the Commission by the Office of the Chief Clerk (OCC) for consideration of the request in accordance with state law and 30 TAC Chapter 55. Notice of the date the Commission will meet to decide whether a hearing will be granted will be mailed by the OCC to the applicant, any person requesting a hearing, and published in the *Texas Register*. The public is also able to provide written pleadings to the Commission for

consideration when hearing requests are set for a commission meeting. The Commission will determine whether to grant a request for a contested case hearing, after considering the hearing request in accordance with state statutes and commission rules. If the Commission determines a hearing should be held, it may convene a hearing or refer the matter to the State Office of Administrative Hearings (SOAH). The date of publication for a notice of a hearing, including a full contested case hearing, for any application shall not be less than thirty (30) days prior to the hearing date. The mailing list for the hearing will be the same as for the application and draft permit along with any person granted the hearing and additional persons who have requested to be on the mailing list.

- c. Processing of Public Comment. The OCC will deliver or mail to the Wastewater Permits Section copies of all public comment and all other documents filed in response to the public notice.

- (1) Before consideration of the application by the executive director or the Commission, a written response to all significant public comments on the draft permit will be prepared in accordance with 30 TAC §55.25.

- (2) For proposed permits acted on by the executive director, the response to comments (RTC) will be available at time of executive director issuance in accordance with 30 TAC §55.25.

- (3) For proposed permits where there is both public comment and hearing requests, the RTC will be available ten (10) days prior to a Commission meeting that considers the hearing request(s).

- (4) For permit applications where a contested case hearing is convened, public comment will also be taken at a preliminary hearing, per 30 TAC §80.105. Any public comment received in response to the public notice of the draft permit or at the preliminary hearing will

be entered into the record, along with an RTC from the executive director.

(5) As specified in 30 TAC §55.25(b)(2), the executive director may call and conduct a public meeting in response to public comments, when there is a significant degree of public interest in the draft permit. A tape recording or written transcript of the public meeting shall be made available to the public.

(6) If a draft permit which was reviewed by EPA and is revised as a result of public comment or a contested case hearing (either as a decision of an administrative law judge, the Commission, or the executive director), the proposed permit may be subject to EPA review again, as described in the MOA.

(7) The RTC will be filed with the OCC and will be available to the public. It will also be mailed to all commenters and to any other person who requested to receive notice of the permit decision.

- d. Contested Case Hearings. After approval of a hearing request by the Commission, a contested case hearing is convened by an administrative law judge from SOAH, who is an attorney licensed to practice in Texas, pursuant to Texas Government Code §2003.047 and Texas Water Code Section §5.311. All procedures and requirements relating to contested case hearings are specified in detail in 30 TAC Chapter 80. The judge determines which persons are legally entitled to party status. Any persons desiring party status but not granted party status are given an opportunity to make public comment. After all public comment has been received by the judge, the proceeding continues as an evidentiary hearing. A tape recording or written transcript of the hearing shall be available to the public. Once all testimony is complete, the judge will close the hearing record and then prepare a Proposal for Decision (PFD) based on the evidence. If, after convening a hearing, the matter becomes settled, the judge will prepare a memorandum describing how the issues were resolved and, if

applicable, how the permit will be modified in agreement of all parties. The judge will transmit a copy of the PFD or memorandum to all parties to the contested case hearing.

7. Permit Issuance and Appeals. State law requires the Commission to act as the final administrative authority on contested proposed permits. The Commission may act to adopt the proposed permit, to adopt the proposed permit with changes, or to deny the permit application. A person affected by a final decision by the Commission on a permit may file a petition for judicial review; however, a motion for rehearing is a prerequisite to an appeal. If such a motion is timely filed relating to a permit application subject to EPA review, TNRCC shall notify EPA of such a filing, and furnish a copy of any new PFD or altered permit issued in response to the motion. EPA shall have thirty (30) days to comment or object to a revised PFD or permit before the record is closed and the commission considers it. If, after a motion for rehearing or an appeal, a proposed permit contains a provision different from the draft or proposed permit reviewed by EPA, the proposed permit may be subject to re-review by EPA as specified in the MOA. EPA may object in accordance with the grounds set out in the MOA and the permit process will then follow those procedures. TNRCC staff will transmit to the Commission all EPA comments on a proposed permit prior to their decision. TNRCC shall promptly transmit the Commission's decisions regarding the final disposition of the application to EPA. For permits subject to EPA review, TNRCC shall notify EPA of judicial appeals of permit decisions when the petitions are served and shall promptly transmit decisions of the court in regard to such appeals. After review of the court decision, EPA may exercise the right to object to the permit in accordance with procedures established in the MOA.

The TNRCC will receive motions filed within twenty (20) days after the date of rendition of a final decision on permit issuance. A reply to a motion for rehearing must be filed within thirty (30) days after the date of rendition of a final decision on a permit issuance. Unless the TNRCC rules on the motion for rehearing within forty-five (45) days after the date of rendition of a final decision on a

permit issuance, the motion is overruled by operation of law. When a motion for rehearing is granted in whole or in part, the final decision is nullified. The hearing, which is an evidentiary hearing, may be reopened to the extent necessary to consider such items allowed by the TNRCC. A decision of the TNRCC is final upon the expiration of the period for filing a motion for rehearing unless a timely motion for rehearing has been filed. A decision of the TNRCC is final and appealable on the date of rendition of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law. A person affected by a final decision of the TNRCC may file a petition for judicial review within thirty (30) days after the decision is final and appealable. The TNRCC shall notify EPA of judicial appeals as received and shall promptly transmit decisions of the court in regard to such appeal.

8. Action on Applications in Uncontested Cases. As described above in Section I.C.6.a., the executive director may approve and issue permits where there are no hearing requests. Title 30 TAC §50.39 describes how a motion for reconsideration may be filed by the applicant, public interest counsel, or other person no later than twenty (20) days after the signed permit is mailed to the applicant. In addition to a specific motion for reconsideration, the Commission shall consider as a motion for reconsideration any objection, protest, or hearing request filed with the Commission's Office of Chief Clerk after the filing deadline for hearing requests and received not later than twenty (20) days after the date the signed copy of the permit is mailed to the applicant. The action of the executive director is not affected unless expressly ordered by the Commission. Unless an extension of time is granted, if the motion for reconsideration is not acted upon by the Commission within forty-five (45) days after the signed permit, the motion for reconsideration is denied.

D. GENERAL PERMITTING PROCESS

Section I.B. of this Chapter describes the development of general permits. Once developed,

processing and issuance of general permits is carried out in accordance with §26.040 of the Texas Water Code, consistent with 40 CFR §122.28 and Part 124.

1. EPA Review. EPA will review draft general permits prior to publication for public comment in the *Texas Register*. EPA will have ninety (90) days from the date of receipt of the draft, prior to publication in the *Texas Register*, to comment, object, or make recommendations on the draft general permit. If EPA fails to respond within ninety (90) days from receipt of the draft, the TNRCC will continue the processing of the general permit. The Director, Office of Water, or the appropriate officials at EPA Region 6 or Headquarters may comment, object, or make recommendations on any draft general permit on behalf of EPA. If public comments are received which result in changes to the general permit, EPA may re-review the revised (proposed) permit as described in the MOA.
2. Public Comment.
 - a. TNRCC will publish notice of a draft general permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed general permit and in the *Texas Register*. If the proposed general permit will have statewide applicability, then the requirement for newspaper notice will be accomplished by publishing notice in the largest daily newspaper of general circulation within several metropolitan areas of the state.
 - b. Mailed notice of the draft general permit will also be provided in accordance with 30 TAC §§39.7 and 39.13(2), (3), (7), and (8).
 - c. The contents of a public notice of a draft general permit will be consistent with 30 TAC §39.11, except where clearly not applicable. Each notice will include an invitation for written comments by the public to the Commission regarding the draft general permit and will be published to allow for at least thirty (30) days for public comment before the Commission

considers the approval of a general permit. Additionally, the public notice of a draft TPDES general permit must include either a map or description of the permit area.

- d. TNRCC may hold a public meeting to provide an additional opportunity for public comment, or when it finds, on the basis of requests, a significant degree of public interest in a draft general permit. TNRCC will give notice of a public meeting by publication in the *Texas Register* not later than the thirtieth (30th) day before the date of the meeting. Mailed notice of the public meeting will also be provided in accordance with 30 TAC §§39.7 and 39.13(2), (3), (7), and (8). The contents of a public notice of a public meeting will be in accordance with 30 TAC §39.11 except where clearly not applicable. Each notice must include an invitation for written or oral comments by the public to the commission regarding the draft general permit. The public comment period shall automatically be extended to the close of any public meeting.
3. Response to Comments and Permit Decision. If TNRCC receives public comment relating to issuance of a general permit, the Commission may issue the general permit only after responding in writing to the comments it received during the comment period. The Commission shall issue a written response to comments on the permit at the same time the Commission issues or denies the permit. The response will be made available to the public. TNRCC will maintain copies of the issued permit and the response to public comment in its Austin office and appropriate regional offices. Additionally, it shall be mailed to each person who made a comment.
4. Processing Notices of Intent (NOIs).
 - a. New Permittees. A discharger who is not covered by an individual permit will submit to the Commission a written notice of intent to be covered by the general permit. The commission may deny the request for coverage under the general permit, in accordance with e. as specified below.

- b. Existing Individual Permittees. A discharger who is covered by an individual permit may obtain substitute authorization to discharge waste under a general permit. At least 180 days prior to the expiration date of the individual permit, a permittee who meets the applicability of a general permit may submit the information required to be included in a Notice of Intent along with a request that the individual permit be canceled. The individual permit will be canceled upon granting of the authorization under the general permit. The Commission may deny the request for coverage under the general permit, in accordance with e. as specified below. If denied, the discharger must apply for renewal of the individual permit prior to the expiration date of the individual permit to maintain authorization to discharge, in accordance with §305.63 (relating to permit renewals).
- c. A discharger may begin discharging under the general permit on the thirty-first (31st) day after receiving the discharger's notice of intent unless the executive director before that time notifies the discharger that the discharger is not eligible for authorization under the general permit.
- d. TNRCC may suspend a discharger's authority to discharge under a general permit and may require a person discharging under a general permit to either cease discharging or to obtain authorization to discharge under an individual permit as required by the Texas Water Code, §26.027 or other law. Based upon the factors provided in e., as specified below, the notice to such a person will include a brief statement of the reasons for this decision, an application form, a statement setting the deadline for filing the application, and a statement indicating that on the effective date of the individual permit, the general permit as it applies to the individual permittee will be suspended.
- e. In determining eligibility or suspension of a discharger, or denial of a Notice of Intent, TNRCC may consider, but is not limited to the following factors:

- (1) The legal status of the owner or the operator which has filed a Notice of Intent;
 - (2) The eligibility of the discharge under a general permit, based upon the proposed quantity of discharge, the type of waste, or the type of operation;
 - (3) The effluent limitations or other permit conditions that apply to a discharge authorized by an individual permit, or a determination that backsliding under 40 CFR §122.44(l) would occur;
 - (4) Changed circumstances since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
 - (5) The discharge is a significant contributor of pollutants. In making this determination, the executive director may consider the following factors:
 - (A) The location of the discharge with respect to waters in the state;
 - (B) The size of the discharge;
 - (C) The quantity and nature of pollutants discharged to waters in the state; and
 - (D) Other relevant factors;
 - (6) The compliance status or history of compliance of the applicant, including non-payment of fees assessed by the commission;
 - (7) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source; or
 - (8) Effluent limitation guidelines are promulgated for point sources covered by the general permit, but the general permit has not yet been amended to incorporate the new effluent limitation guidelines.
- f. The content of the notice of intent (NOI) will be specified in the general permit and will require the submission of information necessary for adequate program implementation,

including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving water(s). An NOI must be signed in accordance with 30 TAC §305.44.

- g. A general permit may specify no NOI is needed (if consistent with state law) or reduced requirements for NOIs to authorize relatively minor or intermittent discharges of waste. In making a finding that no or reduced NOI requirements are appropriate, TNRCC may consider the type of discharge, the expected nature of the discharge, the potential for toxic and conventional pollutants in the discharges, other means of identifying the discharges covered by the permit, and the estimated number of discharges to be covered by the permit. The public notice of the general permit will include the reasons for establishing a reduced NOI.
- h. A general permit remains in effect until amended, revoked, or canceled by TNRCC or, unless renewed by TNRCC, until expired. If the agency has initiated renewal procedures before the permit expiration date, a general permit remains in effect after the expiration date. The general permit will not expire until Commission action on the new general permit is final. Facilities authorized to discharge under an expiring general permit are not required to submit a new notice of intent prior to the expiration date of the general permit. But, upon issuance of the new general permit, the facility shall submit a notice of intent in accordance with the requirements of the new permit.
- i. TNRCC may, through a renewal or amendment process for a general permit, add or delete requirements or limitations to the permit. TNRCC may provide in the general permit a reasonable time to allow dischargers covered by the general permit to make the changes necessary to comply with any additional requirements deemed substantive by the Commission.

5. Authorizations by Rule. Once rules have been developed, and amendments to the regulations have been adopted by the Commission, in accordance with Texas law and after EPA review, dischargers eligible to discharge in accordance with the rule may seek authorization under the TPDES program. For purposes of authorizing these dischargers, TNRCC has adopted 30 TAC §321.141 which specifies consistency with NPDES requirements of 40 CFR §122.28. Section D.4., above, describes how general permit NOIs will be processed. The same or equivalent process will be utilized to authorize dischargers by rule, except that a specific rule may identify additional and more stringent processing requirements.

E. TEMPORARY AND EMERGENCY ORDER PROCESSING

A person already allowed to discharge wastewater or manage sewage sludge in accordance with a TPDES permit may request a temporary or emergency order. The authority to issue these authorizations is specified in the Texas Water Code, Chapter 5, and in regulations found in 30 TAC Chapter 305, Subchapter B and §305.535. A temporary or emergency order (TO/EO) is analogous to an allowable bypass in that it authorizes short-term or temporary conditions of discharge by a TPDES permittee due to unique or emergency situations. The regulations specify the grounds under which a permittee may seek and be granted a TO or EO, culminating in a formal order of the Commission or executive director which makes findings of fact and conclusions of law in approving the EO or TO. The grounds for a TO/EO are equivalent to the grounds for an allowable bypass, per 40 CFR §122.41(m)(4). TNRCC also makes a finding of fact that the discharge by TO/EO will not cause an adverse impact on surface water quality.

The authorization process includes submittal of a sworn application, administrative, technical, and legal reviews, culminating in either a Commission action at a public meeting or executive director action on the application. In the case of a TO, there is public notice with the opportunity for public comment and hearing. The comment period is twenty (20) days long and must be completed prior to action on the TO.

Both mailed notice and local publication of a notice occurs. In the case of an EO (where an emergency exists and which will not allow for twenty (20) days notice), the executive director or Commission may act on the request more expeditiously, as allowed under state law. Then, after approval of an EO, the Commission or executive director will reconsider every EO at a public meeting where it will affirm, modify, or set aside its original order. The Commission will consider hearing requests and either the Commission or executive director will consider responses to comments prepared by the executive director at the time it considers action on an EO or TO, or when it acts to affirm, modify, cancel, or set aside an EO. Appendix 3-G describes processing, includes example shell documents used in processing these type orders, and includes application forms which are utilized.

Simultaneous with filing an EO request with the Commission or the executive director, EPA shall receive a facsimile copy of the draft EO, along with supporting information. EPA will expeditiously review, provide comments, or object to the proposed action, within twenty-one (21) days from receipt of the facsimile. EPA's response may be provided after consideration and possible approval of the EO by the Commission or executive director. Where EPA objects to the EO and has provided specific recommendations along with its objection, as described in Section IV.C.3.e.2. of the MOA, the EO will be modified by TNRCC prior to re-consideration of the EO when it will be modified, set aside, or canceled to satisfy the objection of EPA. Regardless of an EPA objection, the EO remains in effect until canceled or modified by the executive director or Commission, in response to the EPA recommendation.

Simultaneous with filing a TO request with the Office of Chief Clerk for public notice, EPA shall receive a facsimile copy of the draft TO, along with supporting information. EPA will expeditiously review, provide comments, or object to the proposed action, within twenty-one (21) days from receipt of the facsimile. Where EPA objects to the TO and has provided specific recommendations along with its objection, as described in Section IV.C.3.e.2. of the MOA, the TO will be modified by TNRCC to satisfy the EPA objection prior to its consideration of the TO by the Executive Director or Commission.

F. PERMIT ELEMENTS

1. Permit Terms & Expiration. TNRCC-issued TPDES permits, including individual permits for discharge of industrial waste or municipal waste, TPDES permits authorizing sewage sludge management, TPDES general permits, and TPDES authorizations by rule will be issued for terms no greater than five years duration, after which the permittee or TNRCC must renew the permit. Texas Water Code, §26.0285 indicates that the TNRCC shall to the greatest extent practicable, require that all permits for the discharge of waste within a single watershed or within a region of a single watershed contain the same expiration date. To accomplish these aims, the TNRCC promulgated regulations at 30 TAC §305.71. These regulations will facilitate the evaluation of renewal applications within the same river basin, within the same year. The TNRCC has established expiration dates for permits so that all renewals of permits in a given river or coastal basin will come due in the same year. The TNRCC will maintain a five-year cycle of expiration dates. But, the TNRCC may issue a permit for a shorter term (as short as two years in duration) while the agency transitions towards a basin schedule. A description of how TNRCC implements this regulation is included as Appendix 3-H.
2. The basic elements of a permit are the signature page, effluent limitation pages, a schedule of compliance, if applicable, standard permit provisions, and other conditions applicable to the facility.
 - a. The signature page includes the permittee name, permit number, a description of the facility and its location, a description of the discharge route, and expiration date.
 - b. Effluent pages for industrial permits will generally contain Daily Average and Daily Maximum limitations. While industrial permit limits are usually mass based, permits may contain concentration based limits where appropriate. Some permits, especially storm water discharges of an intermittent nature, may only include daily maximum limitations. Effluent pages for municipal permits will contain Daily Average mass and concentration limits, 7-day

Average, and Daily Maximum concentration limits where appropriate. Limitations for flow will be included for continuous discharges and Single Grab concentration limits will be included as grab concentrations that are not to be exceeded. The monitoring frequency and sample type are included with each parameter. Each effluent page will also contain a brief description of the outfall location or may be described as "following all treatment units". Schedules of compliance will be used in accordance with 30 TAC §305.127 (equivalent to 40 CFR §122.47) if a permittee needs up to three years to complete projects necessary to meet permit effluent limitations based upon the Texas Surface Water Quality Standards. Interim limitations will be used if the project schedule exceeds one year. Any schedule of compliance shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

- c. Standard provisions will be included with each permit. The standard provisions will include statutory and regulatory requirements as specified in 30 TAC Chapters 305 and 319, including §§305.122(a), 305.125, 305.126, 305.127(b), 305.531, 305.534, 305.535, 319.5(e), and 319.12. The current set of standard provisions incorporated into all industrial and municipal wastewater discharge permits is shown in Appendix 3-I. The standard provisions include:
 - (1) Definitions and Standard Permit Conditions;
 - (2) Monitoring and Reporting Requirements;
 - (3) Permit Conditions; and
 - (4) Operational Requirements.
- d. The standard provisions are largely consistent with NPDES minimum requirements set out in 40 CFR §122.41, and are more stringent in some instances. Where the provisions do not currently include equivalent provisions specified in NPDES regulations, TNRCC will modify

its provisions to include those provisions in its standard provisions. The following additional provisions will be included in all TPDES permits, in addition to those specified in c. above:

- (1) Permit Condition 4. will be modified to include a new subsection f. relating to Toxic Pollutants, consistent with Part III.A.3. of the EPA standard provisions;
- (2) Monitoring and Reporting Requirement 1. will be modified to specify the use of DMRs for major, 92-500, and significant minor dischargers, with the new provision to state: “Unless otherwise specified, a monthly effluent report shall be submitted each month by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on Discharge Monitoring Report (DMR) Form EPA No. 3320-1 signed and certified as required by Part III.D.11 or Monthly Effluent Report (MER) TNRCC LPS Form 0123A1, whichever is applicable.”
- (3) Operational Requirement 7. will be modified to specify confidentiality claims, consistent with Part III.D.12. of the EPA permit shell;
- (4) TNRCC will specify the penalties under the Clean Water Act as a new provision in its standard provisions, by referencing 40 CFR §122.41(a), relating to Duty to Comply; and
- (5) To its Definitions and Standard Permit Conditions, TNRCC will add a definition of “daily discharge”, consistent with Definition 6. in the EPA standard provisions.

e. Other Requirements.

- (1) Municipal permits in cities required to maintain a pretreatment program will include permit provisions for such a program in the Other Requirements. TNRCC will continue such conditions from NPDES permits TNRCC assumes and will utilize the same type provisions in other permits where pretreatment programs are added. All municipal permits developed for a POTW will include a provision consistent with 40 CFR §122.42(b), relating to adequate

notice to the TNRCC of the introduction of pollutants.

(2) Sewage Sludge Provisions, also shown in Appendix 3-J, are included in all municipal permits and govern sewage sludge management by the permittee, in accordance with 30 TAC Chapters 312. Appendix 3-J describes the standard sludge provisions specified in Sections I, II, and III. Additionally, permits may specify a Section IV if the permittee requires authorization for marketing and/or distribution of sludge and sludge-derived materials or when the permittee requires authorization to manage a surface disposal site.

(3) Provisions will be included in applicable permits developed for manufacturing, commercial mining, and silvicultural dischargers, consistent with 40 CFR §122.42(a), relating to notification of discharge of certain toxic pollutants. This provision will be equivalent to Part III.D.10. of the EPA standard provisions.

(4) Permits generally contain additional "Other Conditions/Other Requirements" that are determined on a case-by-case basis.

- f. Whole Effluent Toxicity Testing (biomonitoring). Biomonitoring is currently required as "Other Conditions" for industrial majors, significant minors, and for municipal majors. Biomonitoring requirements will be placed in all municipal permits with a permitted flow of 1.0 MGD or greater. Smaller facilities will be considered on a case-by-case basis where a significant toxicity potential exists (as described in Appendix 3-D of this application). The frequency of biomonitoring for municipal facilities will be a function of permitted flow, past biomonitoring performance, effluent quality, and the existence of an EPA-approved pretreatment (or TNRCC-approved after TPDES program assumption) program. All major industrial facilities will typically be required to conduct biomonitoring at continuously discharging non-domestic outfalls and process wastewater outfalls. Where significant toxicity potential exists (as described in Appendix 3-D of this application), minor facilities

may be required to conduct biomonitoring on a case-by-case basis. The frequency of biomonitoring will be a function of past biomonitoring performance and effluent quality. TNRCC will require WET effluent limitations, a chemical specific limitation, or the imposition of a suitable best management practice into TPDES permits. These toxicity controls will be utilized where a reasonable potential for effluent toxicity has been demonstrated (as described in Appendix 3-D of this application). Additionally, to implement 30 TAC §307.6(e)(2)(b), all major industrial and municipal permittees will be required to conduct biomonitoring semi-annually. Testing will be conducted using 100% effluent over a 24-hour exposure period. A complete description of how whole effluent toxicity testing is implemented into wastewater permits, how reasonable potential for effluent toxicity is determined, and how WET limitations are set is described in detail in Appendix 3-D.

- g. Permit packages will also include a Fact Sheet for all major facilities and a Statement of Basis for other facilities. The Fact Sheet will contain, as a minimum, the information as required in 30 TAC §281.21(c). A permit rationale will be developed for all industrial and municipal majors and submitted with the draft permit to EPA. The rationale will include a discussion on the development of permit limits and requirements, including appropriate calculations and development of whole effluent toxicity limitations or requirements. For permits with proposed variances to the water quality standards, the Fact Sheet of Statement of Basis will include a statement describing TNRCC authority under the Texas Water Code, Chapter 26, the justification for the variance, and the length of time the variance would be in effect.

II. AGRICULTURAL (CONCENTRATED ANIMAL FEEDING OPERATIONS)

PERMIT DEVELOPMENT

The TNRCC water quality permitting and enforcement program for concentrated animal feeding operations (CAFOs) and animal feeding operations (AFOs) is authorized under Chapter 26 of the Texas Water Code (TWC). The TNRCC and its predecessor agencies have issued individual permits or permit-by-rules to agricultural operations since the 1970's. Facilities not requiring a permit are authorized by rule. The key requirements for CAFOs are the same as EPA's requirements for CAFOs. All facilities must be designed, constructed, operated and maintained to prevent a discharge of waste or wastewater into waters in the state, except during a rainfall event which exceeds the 25-year, 24-hour event. In addition, waste and wastewater generated at the facility must be properly managed with practices, such as, beneficial reuse on agricultural cropland, composting or evaporation. TNRCC requirements for CAFOs and (AFOs) exceed all NPDES requirements in 40 CFR §122.23 and Appendix B of Part 122.

A. CAFO PERMITTING

1. Background. The TNRCC operates its CAFO program under rules in the Texas Administrative Code (TAC). These rules are 30 TAC Chapter 321, Subchapters B & K. Subchapter B applies to facilities built on or before July 13, 1995. Subchapter K applies to all facilities built after July 13, 1995. After authorization, all new and renewed applications shall be issued under the Subchapter K rules and format. Current Subchapter B facilities will be renewed under Subchapter K. Subchapter K requirements exceed those required for authorization by the EPA Region VI General Permit for CAFOs. Additional requirements which exceed NPDES requirements are included in the state rule to provide for further protection of ground water quality and air quality, in accordance with state law.

2. **Applicability.** Subchapter B requires that certain size facilities file an application for an individual permit. Facilities not required to obtain a permit are required to operate according to the technical provisions of the subchapter and are covered as an authorization-by-rule. Subchapter K requires that all operations with more than 1000 animal units apply for a permit-by-rule. Facilities with 300 to 1000 animal units in Erath, Comanche, Bosque, Hamilton, Johnson, Hopkins, Wood and Rains Counties are required to apply for a permit-by-rule or request authorization to participate in the training and audit program. These eight counties are considered the Dairy Outreach Program Areas (DOPA). The requirements for the training and audit option are: 1) register the facility; 2) meet the education requirements [complete an eight-hour course on animal waste management within 12 months of registering with the TNRCC, and complete an additional eight hours of training every two years]; and 3) meet audit requirements [have an independent third party audit of the dairy conducted at least once every five years]. Facilities with 300 to 1000 animal units outside the DOPA are required to register with the TNRCC. All AFOs authorized under Subchapter K must operate in accordance with the technical requirements of Subchapter K. Upon written request to TNRCC by the operator, any facility currently authorized under Subchapter B may be authorized under Subchapter K without notice or public hearing.
3. **Air Quality Requirements.** In addition, the TNRCC may require all animal feeding operation to comply with air quality requirements in order to achieve the policy and purposes identified in the Texas Clean Air Act. Existing facilities under Subchapter B must meet the standard exemption in Chapter 106 or obtain a permit under Chapter 116. Any new CAFO which meets all the requirements of Subchapter K is entitled to an air quality standard permit authorization in lieu of the requirement to obtain an air quality permit under the Texas Clean Air Act, Chapter 116, relating to Control of Air Pollution by Permits for New Construction or Modification. Those CAFOs which would otherwise be required to obtain an air quality permit, but which cannot meet all the

requirements under Subchapter K, must apply for and obtain an air quality permit under Chapter 116. Those operations which are not required to obtain authorization under Subchapter K may be subject to air quality requirements under Chapter 116.

B. PERMITTING PROCESS FOR AGRICULTURE

1. Permitting Process for Subchapter B. Until authorization, and applicable to only those facilities built on or before July 13, 1995, an application may be filed under Subchapter B. Subchapter B applications are reviewed for administrative and technical completeness in accordance with TNRCC rules. The technical review includes the following items: all calculations for waste and wastewater production, pond-sizing to contain the 25-year, 24-hour rainfall event, land application at agronomic rates to determine the acreage required, buffer zones from creeks, wells, and other surface or ground water features. Once the application is administratively and technically complete, the proposed permit is drafted. Notice is then mailed to the adjacent landowners and other persons/parties on the state mailing list or who in the judgement of the TNRCC may be affected. The applicant must publish the Notice of Application and Technical Completeness in a newspaper generally circulated in the area of the proposed facility. The public has thirty days from the date of newspaper publication to file a protest of the application and request a public hearing. If no requests for public hearing are filed, the permit is signed and issued by the Executive Director. If a request for hearing is received, a public hearing is scheduled according to the process described previously in this Chapter, Sections A.4. - A.6.
2. Permitting Process for Subchapter K. An application filed under Subchapter K is reviewed for administrative and technical completeness in accordance with TNRCC rules. The technical review includes the following items: all calculations for waste and wastewater production; pond-sizing to contain the 25-year, 24-hour rainfall event; land application at agronomic rates to determine the

acreage required; buffer zones from creeks, wells, and other surface or ground water features; and the pollution prevention plan. Once the application is administratively and technically complete, the proposed permit-by-rule is drafted. Notice is then mailed to the adjacent landowners and other persons/parties on the state mailing list or who in the judgement of the TNRCC may be affected. The applicant must publish the Notice of Application and Technical Completeness in a newspaper generally circulated in the area of the proposed facility. The public has thirty days from the date of newspaper publication to file comments on the application based on technical merit. The comments are reviewed by the Executive Director to determine whether any public comments demonstrated technical merit. technical merit is defined as:

"evidence demonstrating that the application on its face does not meet all technical requirements of this subchapter and therefore the granting of an authorization under this subchapter may result in detrimental impacts to ground water underlying the related CAFO, detrimental impacts to surface water quality within one mile of the CAFO, or evidence demonstrating that history of compliance by the applicant has resulted in detrimental impacts to such ground water or surface water quality within these geographic limits".

The technical merit determination is then mailed to the applicant and all commenters. Both the applicant and person filing the public comment can request to have the Executive Director's technical merit determination reviewed by the Commission. If no requests for Commission review are filed and there were no technical merit issues, the Executive Director signs and issues the permit-by-rule. If requests for Commission review are filed, the item is scheduled for the Commissioners' agenda. Depending on the Commissioners' decision on the Executive Director's determination, then the appropriate action is taken by the Executive Director (i.e. no technical merit issues exist--the permit-by-rule would be issued, technical merit issues exist--the application would be returned.)

3. Permitting Process for transfers from B to K. When the owner of a facility currently authorized under Subchapter B submits an application to transfer from Subchapter B to Subchapter K, the application is reviewed to see if any special situations exist which require additional action. For facilities which do not require written authorization (less than 300 animal units in the DOPA or 1000 animal units in other areas of the state), a letter is written to confirm the transfer from Subchapter B to Subchapter K. For facilities in the DOPA requesting the Training and Audit Program, a letter is written outlining the requirements for education, training, and audits. For facilities requiring a permit-by-rule, a new permit-by-rule is drafted. The permit-by-rule is then issued without notice or public hearing provided there are no compliance problems or changes which constitute a major amendment.

C. CAFO APPLICATION REQUIREMENTS

1. Any person required to file an application for a new, amendment or renewal of an authorization or individual permit under Subchapter B until authorization or Subchapter K, must complete, sign and submit the appropriate application. Appendix 3-K contains the application form utilized by TNRCC. All applications must contain some key information: 1) verified legal status of the applicant; 2) payment of applicable fees; 3) maximum number of animals the facility is designed to manage; 4) applicant's original signature; and 5) copy of recorded deed or tax records showing ownership of the facility. Other information required is listed below for new or amendments for Subchapter B or Subchapter K.
2. Subchapter B:
 - a. vicinity map;
 - b. list of adjacent landowners;
 - c. adjacent landowner's map;

- d. USGS Quadrangle;
 - e. Well location and information;
 - f. site plan;
 - g. NRCS Soils Map and Soils Information; and
 - h. Technical report which must contain design information for the pond-sizing, berms, land application areas, and liner specifications and/or information.
3. Subchapter K:
- a. final site plan depicting the location and physical aspects of the facility;
 - b. county general highway map identifying the facility's location and depicting a 1-mile area around the facility;
 - c. U.S. Geological Survey Map showing the facility's land boundaries and location of any nearby ground water wells and surface water;
 - d. Copy of the facility's Pollution Prevention Plan (PPP) developed according to §321.192, Subchapter K rules;
 - e. certification that no ground or surface water recharge features exist;
 - f. certified plan regarding prevention of impacts on any ground or surface water recharge features that may exist;
 - g. area land use map identifying facility property line, permanent odor sources, and distance and direction to any occupied neighboring structure within 1-mile; and
 - h. location, time, and day where the application for authorization may be viewed by the public.
4. Pollution Prevention Plan (PPP). All facilities operating under Subchapter K must prepare a Pollution Prevention Plan (PPP). The PPP must be prepared in accordance with §321.192. Good engineering and agronomic practices must be used in the PPP. The PPP includes measures necessary to prevent the discharge of pollutants to waters in the state and occurrence of nuisance

conditions. A specific individual(s) shall be identified as being responsible for development, implementation, maintenance, and revision of the PPP.

5. Recharge Feature Certification. Site-specific documentation must be provided to demonstrate whether or not a hydrologic connection exists between the contained wastewater and waters in the state. This documentation must be certified by an NRCS engineer, professional engineer or qualified ground water scientist. Furthermore, a description of how watercourses, recharge zone features, and land subject to erosion will be protected by structural or non-structural controls (berms, blocks, waterways, diversions, filter-strips, and buffer zones) shall be documented.

D. CAFO APPLICATION REVIEW

The Agriculture Team of the Water Quality Division reviews the application for administrative and technical completeness. Upon receipt of an application, a thorough review is conducted to ensure that the facility will operate in compliance with the rules and that air and water quality will be protected. An applicant may be requested to submit additional information if the application is not complete. The MOA specifies that EPA waives its review of these type draft or proposed authorizations.

E. PUBLIC NOTICE REQUIREMENTS UNDER SUBCHAPTER B AND K

Once all necessary information has been received, the application will be declared administratively and technically complete. The applicant will then be instructed to publish a public notice. Every applicant for a new authorization or major amendment is responsible for causing notice of the application to be published in a newspaper regularly published or circulated in the county or area where the facility is to be located, and within an adjoining county wherein a potentially affected person may reside. Instructions for publication of the notice will be provided to the applicant by the Office of the Chief Clerk, TNRCC. The applicant is responsible for the cost of the required notice. The TNRCC will mail notice of application and

administrative and technical completeness to the applicant; adjoining landowners, applicable local, state, and federal government officials and agencies; and other interested persons.

F. PUBLIC COMMENT

All public comments made regarding the application must be in the form of a written, sworn statement that describes in detail how the application, if approved, would affect a person, property, or other legally justiciable interest of the commenter. Public comment shall be considered in the manner explained in Part G, Final Consideration of the Application.

G. FINAL CONSIDERATION OF THE APPLICATION

1. If no comments are received within the thirty days after notice is published, the permit or permit-by-rule is signed and issued by the Executive Director.
2. For Subchapter B, if comments are received within thirty days after notice is published, a public hearing will be scheduled. At the public hearing, all parties involved try to resolve differences and the draft permit may be amended to reflect an agreement between the parties.
3. For Subchapter K, if comments are received within the thirty days after notice is published and the Executive Director makes a determination of no technical merit. The following are the possible results:
 - a. No requests for the Commissioners to review the Executive Director's determination are submitted within twenty (20) days. Then the Executive Director signs and issues the permit-by-rule.
 - b. Requests for the Commissioners to review the Executive Director's determination are submitted with twenty (20) days. The item is then placed on the Commissioners' agenda and commenters are notified of the agenda date. At the agenda, the Commissioners will do one of

the following:

- 1) confirm the Executive Director's determination of no technical merit. The Executive Director will then sign and issue the permit-by-rule.
 - 2) determine that there is technical merit. The application is returned to the Executive Director to resolve the technical merit issue(s).
4. For Subchapter K, if comments are received within the thirty days after notice is published and the Executive Director makes a determination of technical merit; then the applicant, commenter(s), and the TNRCC's Office of Public Interest Counsel will be notified in writing. The applicant shall then ask the TNRCC to do one of the following:
- a. withdraw the application without reimbursement of fees and without prejudice;
 - b. forward the application for a contested case hearing to the State Office of Administrative Hearings;
 - c. file a request to have the Commission review the Executive Director's determination that a comment has or has not demonstrated technical merit; or
 - d. request that the TNRCC suspend processing of the application for a period (not more than 30-days) to allow the applicant time to provide additional information.
5. If additional information or other changes to the application cannot satisfy technical merit issues without constituting a major amendment to the application, the applicant may request suspension of action on the application until the defect is remedied. If no written response by the applicant is received by TNRCC, the applicant and commenter may be notified in writing that the application is denied.

H. PERMIT TERM & RENEWAL OF PERMITS

All CAFO facilities permitted or authorized under Subchapter B, until authorization, or Subchapter

K are issued for a term of up to five years. A facility with an authorization issued under the these rules must submit an application for renewal with a fee at least 180 days before the expiration date of the effective authorization, unless permission for a later date has been granted. A renewal authorization may be granted without notice or public comment if the application for renewal meets these conditions: 1) the application does not propose any other change to the authorization; 2) a formal major enforcement action against the facility has not occurred during the last 36 months; and 3) the facility has been inspected within the previous 12 months if the facility is in the DOPA.

Prior to expiration of a CAFO's authorization under the EPA Region VI General Permit, the permittee will be required to renew or amend the authorization by submittal of an application in accordance with the appropriate subchapter. TNRCC requirements are more stringent than those contained in the EPA Region VI General Permit (*Fed. Reg., Feb. 8, 1993*).

I. DISCHARGE REPORTING

In the event a discharge of wastewater occurs, the facility operator is required to notify the TNRCC orally or by facsimile within 24 hours and in writing within 14 working days. In addition, the operator is required to document the discharge occurrence in the PPP along with the description, cause, date, time, amount of precipitation, and the procedures and laboratory data for sampling the discharge.

J. REGISTRATION

1. Subchapter B. All dairies must register with the TNRCC.
2. Subchapter K. All new animal feeding operations which confine more than 300 animal units or 300 head of species or combination of animal species not specified in the Subchapter K rules which have a potential to discharge into the waters in the state, shall register with TNRCC. The registration shall be made in writing and include the following information: the business name, physical location

including a map, mailing address and number of head in confinement. Notification shall be signed by the owner or operator and submitted not later than 180 days from July 13, 1995 or commencement of operation, whichever is later. Persons who are not subject to a permit must register to meet requirements which are equivalent to the EPA Region VI General Permit. Additionally, the registrants must locate, construct, manage, and operate waste control facilities to protect surface and ground water in accordance with standards for waste utilization, land spreading, and pesticide use.